

REMARKS

Reconsideration and allowance of the subject application in view of the foregoing amendments and the following remarks is respectfully requested. Entry of this Amendment under Rule 116 is merited as it raises no new issues and requires no further search.

Claims 15-17 are pending in the application. Claims 2-14 have been cancelled to simplify the issue. Claims 15-17 have been rewritten in independent form including all limitations of base claim 2, except the second to last section, and the respective intervening claims. The specification including the Abstract and the drawings have been revised in the manner kindly suggested by the Examiner in the Office Action. New FIG. 8 has been added and the specification has been amended to include a brief description of and reference to newly added FIG. 8. No new matter has been introduced through the foregoing amendments.

All limitations of claims 15-17 have been considered by the Examiner, and therefore, the claim amendments raise no new issues.

The drawing objections manifested in paragraph 1 of the Office Action are believed overcome in view of the above amendments.

The drawing objection manifested in paragraph 2 of the Office Action is believed overcome in view of the submission of new FIG. 8 which shows the claimed stiffness relationship.

The specification objections manifested in paragraphs 3-4 of the Office Action are believed overcome in view of the above amendments.

The specification and claim objections manifested in paragraphs 5-7 of the Office Action are moot as the claim language being objected to has been removed.

The *35 U.S.C. 112, first paragraph* rejection of claims 15-17 as failing to comply with the

written description requirement is traversed for the following reasons.

First, the Examiner has not met the **initial burden** of presenting by a preponderance of evidence why a person skilled in the art would not recognize in an applicant's disclosure a description of the invention defined by the claims. *Wertheim*, 541 F.2d at 263, 191 USPQ at 97. In rejecting a claim, the examiner must set forth express findings of fact which support the lack of written description conclusion. These findings should:

- (A) Identify the claim limitation at issue; and
- (B) Establish a **prima facie case** by providing **reasons why** a person skilled in the art at the time the application was filed would not have recognized that the inventor was in possession of the invention as claimed in view of the disclosure of the application as filed. *See MPEP* (Rev. 2, May 2004), Section 2163.III.A, page 2100-176.

The *35 U.S.C. 112, first paragraph* rejection manifested in paragraph 8 of the Office Action clearly failed to meet, at least, requirement (B), because the Examiner did not specify any reason why a skilled artisan would not have recognized that the inventor was in possession of the invention as claimed (the lengthy discussion in paragraph 8 of the Office Action tended to state that the Examiner personally could not recognize that the inventor was in possession of the invention as claimed). Accordingly, Applicants are not persuaded that a **prima facie case** of lack of written description for the rejected claims has been properly established. The *35 U.S.C. 112, first paragraph* should be withdrawn or at least rephrased.

Second, Applicants respectfully submit that a skilled artisan would have recognized that the inventor was in possession of the invention as claimed in view of the disclosure of the application as filed. For example, with respect to the claimed position of the absorbent core relative to the crotch region, the claimed invention finds support in at least page 8, line 16 through page 9 line 1 of the specification as filed. This passage even includes language similar to the language of claim 2,

now amended claims 15-17. With respect to the “under tension” limitation, the Examiner’s attention is respectfully directed to the second to last section of each of amended claims 15-17. With respect to the “circular arc” limitation, the claimed invention finds support in the drawings as filed, e.g., FIG. 1, where it is depicted that some portion, e.g., 10A, of the elastic does not extend in a circular arc. The remaining limitations are not recited in pending claims 15-17.

In view of the above arguments, Applicants respectfully request that the *35 U.S.C. 112, first paragraph* rejection of claims 15-17 be withdrawn.

The *35 U.S.C. 112, second paragraph* rejection of claims 15-17 as being indefinite is believed overcome, because the allegedly indefinite claim language has been removed from the pending claims.

The Examiner’s claim interpretations in paragraph 10 of the Office Action are noted. However, the source of the Examiner’s “+/- 45 degrees” definition of “transversely” is unclear. Clarification is respectfully requested.

The art rejections manifested in paragraphs 11-15 of the Office Action are moot as the rejected claims have been cancelled.

The *35 U.S.C. 103(a)* rejection of claims 15-17 as being obvious over U.S. Patent No. 6,049,916 to *Rajala* and U.S. Patent No. 6,367,089 to *Van Gompel* is traversed because the applied references singly or in combination fail to disclose, teach or suggest all limitations of the rejected claims.

As to claim 15, the applied references fail to disclose, teach or suggest that “a tensile stress of said first elastic member being greater in the end portions than in the central portion.” This claim feature finds support in page 7, lines 15-19 of the specification and FIG. 1. In particular, in the specific embodiment shown in FIG. 1, the tensile stress of end portions 9a of the first elastic

member is greater than in the central portion 9b.

The Examiner relied on column 11, lines 26-62 of *Rajala* for this claim feature. However, this passage of *Rajala* only discloses that the amount of elongation of the front leg elastic (48) may be different from that of the crotch elastic (51) and that of the back leg elastic (50). *See* lines 35-36, 38, and 50-51. The cited passage in particular and *Rajala* as a whole do not teach or suggest that the amounts of elongation in sections 48A, 48B and 48C of the front elastic may be different. In addition, the reference clearly fails to teach or suggest the desirability of the claimed tension relationship, i.e., a tensile stress of the front elastic is greater in the end portions (e.g., 48A and 48C of *Rajala*) than in the central portion (e.g., 48B of *Rajala*).

Accordingly, Applicants respectfully submit that the obviousness rejection of claim 15 is inappropriate and should be withdrawn.

As to claim 16, the applied references fail to disclose, teach or suggest that “a tensile stress of said second elastic member being greater in the end portions than in the central portion.” The rejection of claim 16 is traversed for reasons similar to those advanced with respect to claim 15.

As to claim 17, the applied references fail to disclose, teach or suggest that a tensile stress of the end portions of each of said first and second elastic members is greater than that of the central portion. The rejection of claim 17 is traversed for the reasons advanced with respect to any of claims 15 and 16.

Accordingly, all claims in the present application, namely, claims 15-17, are now in condition for allowance. Early and favorable indication of allowance is courteously solicited.

The Examiner is invited to telephone the undersigned, Applicant's attorney of record, to facilitate advancement of the present application.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 07-1337 and please credit any excess fees to such deposit account.

Respectfully submitted,

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